

2005 DRAFTING REQUEST

Bill

Received: 07/14/2005

Received By: mlief

Wanted: As time permits

Identical to LRB:

For: Michael Ellis (608) 266-0718

By/Representing: don dyke

This file may be shown to any legislator: NO

Drafter: mlief

May Contact:

Addl. Drafters:

Subject: Courts - garn/injunct

Extra Copies:

Submit via email: YES

Requester's email: Sen.Ellis@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Recovery of creditor's costs in nonearnings garnishment actions

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	mlief 07/14/2005	lkunkel 07/19/2005					
/1			rschluet 07/19/2005		sbasford 07/19/2005	mbarman 08/24/2005	

FE Sent For: none

<END>

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for
Senate
per
MJL

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/?	mlief	1 mk 7/18					
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FE Sent For:

<END>



WISCONSIN LEGISLATIVE COUNCIL

*Terry C. Anderson, Director
Laura D. Rose, Deputy Director*

TO: SENATOR MICHAEL ELLIS
FROM: Don Dyke, Chief of Legal Services 
RE: Draft Proposal on Recovery of Creditor's Costs in Nonearnings Garnishment Actions
DATE: May 19, 2004

Attached is draft legislation, WLC: 0255/1, prepared at the request of your office, dealing with recovery of creditor's costs in nonearnings garnishment actions.

Your office has been contacted by a constituent who points out an apparent discrepancy in the treatment of recovery of creditor's costs in earnings garnishment actions and nonearnings garnishment actions. The constituent notes that in earnings garnishment actions, the creditor may recover all costs -- garnishment filing fee, garnishee fee, and service of process costs -- in addition to the debt owed the creditor. In contrast, in nonearnings garnishment, the amount the creditor may recover for "disbursements" may not exceed \$40.

The attached draft represents one approach to addressing the discrepancy. The draft eliminates the \$40 cap, allowing the creditor to recover "disbursements,"* with no limitation. Another approach would be to increase the current \$40 limit to a higher limit, reflecting current fees and costs. However, under the latter approach, as fees and costs rise the discrepancy would reappear.

The \$40 limit has been in effect since 1984 (see 1983 Wisconsin Act 257). At that time, the \$40 limit applied to both earnings and nonearnings garnishment. Effective 1994, the law on earnings garnishment was comprehensively revised. See 1993 Wisconsin Act 80. As part of that revision, a creditor in an earnings garnishment action was allowed to recover all costs, with no \$40 limit. The \$40 limit that, following the revision, applied only to nonearnings garnishment, remained in the statutes. Presumably, the \$40 limit was not changed for nonearnings garnishment because the legislation dealt solely with earnings garnishment. I am not aware of any attempts following the revision of earnings garnishment law to increase or eliminate the \$40 limit under discussion.

* Because the \$40 limit is eliminated by the draft, consideration might be given to expressly defining what the term "disbursements" includes.

You may wish to circulate the attached draft among interested parties for comment. In the meantime, if you have any questions or need additional information, please contact me directly at the Legislative Council staff offices.

DD:tlu

Attachment

DD:tlu;...

05/19/2004

Regin

1 **AN ACT** *to amend* 812.04 (2), 812.05 (1) and 812.13 (1) of the statutes; **relating to:**
2 recovery of creditor's costs in nonearnings garnishment actions.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 **SECTION 1.** 812.04 (2) of the statutes is amended to read:

4 812.04 (2) The garnishee summons shall be substantially in the following form:

5 STATE OF WISCONSIN

6 COURT

7 COUNTY

8 A. B., Plaintiff

9 vs.

10 C. D., Defendant

11 and

12 E. F., Garnishee

13 The State of Wisconsin, to the garnishee:

14 You are hereby summoned, as garnishee of the defendant, C. D., and required, within
15 20 days after the service of this summons and the annexed complaint upon you, exclusive of
16 the day of service, to answer, whether you are indebted to or have in your possession or under
17 your control any property belonging to the defendant.

18 **IF YOU ARE INDEBTED TO THE DEFENDANT FOR PAYMENT FOR THE SALE**
19 **OF AGRICULTURAL PRODUCTS, YOU ARE ORDERED TO PAY THE PRESCRIBED**
20 **AMOUNT TO THE DEFENDANT. YOU ARE ORDERED TO RETAIN FROM THE**

1 BALANCE THE AMOUNT OF THE PLAINTIFF'S CLAIM AND DISBURSEMENTS,
2 AS STATED IN THE ANNEXED COMPLAINT PENDING THE FURTHER ORDER OF
3 THE COURT. ANY EXCESS INDEBTEDNESS SHALL NOT BE SUBJECT TO THE
4 GARNISHMENT. IF YOU HAVE PROPERTY BELONGING TO THE DEFENDANT
5 AND THE AMOUNT OF INDEBTEDNESS RETAINED IS LESS THAN THE AMOUNT
6 CLAIMED AND DISBURSEMENTS, YOU ARE TO RETAIN THE PROPERTY
7 PENDING THE FURTHER ORDER OF THE COURT, EXCEPT AS PROVIDED IN
8 SECTION 812.18 (3) OF THE WISCONSIN STATUTES. ~~THE AMOUNT RETAINED BY~~
9 ~~YOU FOR THE PLAINTIFF'S DISBURSEMENTS MAY NOT EXCEED \$40.~~

10 You are further required to serve a copy of your answer to the garnishee complaint on
11 the undersigned attorney and to file your original answer with the clerk of this court, within
12 the 20-day period. In case of your failure to answer, judgment will be entered against you for
13 the amount of plaintiff's judgment against the defendant and costs, of which the defendant will
14 also take notice.

15 If the property which is the subject of this garnishment action is the proceeds from the
16 sale of crops, livestock, dairy products or another product grown or produced by a person or
17 by his or her minor children, you must pay over to the principal defendant the appropriate
18 amount under section 812.18 (2m) (b) of the Wisconsin Statutes.

19 Dated this day of, (year)

20 Clerk of Court

21 (Seal)

22 Attorney for Plaintiff:

23

24 P. O. Address

1

2

3 **SECTION 2.** 812.05 (1) of the statutes is amended to read:

4 812.05 (1) The garnishee complaint in a garnishment action before judgment must
5 allege the existence of one of the grounds for garnishment mentioned in s. 812.02 (1) (a), the
6 amount of the plaintiff's claim against the defendant and disbursements, ~~not to exceed \$40,~~
7 above all offsets, known to the plaintiff, and that plaintiff believes that the named garnishee
8 is indebted to or has property in his or her possession or under his or her control, other than
9 earnings, as defined under s. 812.30 (7), belonging to the defendant (naming him or her) and
10 that the indebtedness or property is, to the best of plaintiff's knowledge and belief, not exempt
11 from execution.

Ins (12) 3-12
13 **SECTION 3.** 812.13 (1) of the statutes is amended to read:

14 812.13 (1) If the answer shows a debt due to the defendant, the garnishee may pay the
15 debt or an amount sufficient to cover the plaintiff's claim, as stated in the garnishee complaint,
16 and disbursements, ~~not to exceed \$40,~~ to the clerk of the court. If prior to so doing, the plaintiff
17 in writing requests the garnishee to pay the sum to the clerk, the garnishee shall, within 5 days
18 after receipt of the request, pay the sum to the clerk. The clerk shall give a receipt for payment
to the garnishee. The payment shall discharge the garnishee of all liability for the amount paid.

(19) **SECTION 4. Initial applicability.** ~~The treatment of sections 812.04 (2), 812.05 (1), and~~
(20) ~~812.13 (1) of the statutes~~ ^{This act} first applies to a garnishment action commenced on the effective date
21 of this section.

22 **SECTION 5. Effective date.** This act takes effect on the first day of the 4th month
23 beginning after publication.

24 (END)

2005

Date (time)
needed

7/21

LRB - 3357 / 1

mrz: lmk:

BILL

Use the appropriate components and routines developed for bills.

GenCat
AN ACT . . . [generate catalog] *to repeal . . . ; to renumber . . . ; to consolidate and renumber . . . ; to renumber and amend . . . ; to consolidate, renumber and amend . . . ; to amend . . . ; to repeal and recreate . . . ; and to create . . .* of the statutes; relating to: *recovery of costs in nonearnings garnishments*

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

Analysis by the Legislative Reference Bureau

If titles are needed in the analysis, in the component bar:

For the main heading, execute: create → anal: → title: → head

For the subheading, execute: create → anal: → title: → sub

For the sub-subheading, execute: create → anal: → title: → sub-sub

For the analysis text, in the component bar:

For the text paragraph, execute: create → anal: → text

91 Current law permits a creditor in a garnishment of ^{earnings} to recover all costs associated with the action, but permits a creditor to recover not more than \$40 of costs in a ^{nonearnings} garnishment. This bill removes this \$40 limit on the recovery of costs in a nonearnings garnishment.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION #.



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-3357/P1
MJL...jf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Identical
Reps

1 **AN ACT** relating to: recovery of creditor's costs in nonearnings garnishment
2 actions.

Analysis by the Legislative Reference Bureau

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

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6 COURT

7 COUNTY

8 A. B., Plaintiff

9 vs.

10 C. D., Defendant

1 and

2 E. F., Garnishee

3 The State of Wisconsin, to the garnishee:

4 You are hereby summoned, as garnishee of the defendant, C. D., and required,
5 within 20 days after the service of this summons and the annexed complaint upon
6 you, exclusive of the day of service, to answer, whether you are indebted to or have
7 in your possession or under your control any property belonging to the defendant.

8 IF YOU ARE INDEBTED TO THE DEFENDANT FOR PAYMENT FOR THE
9 SALE OF AGRICULTURAL PRODUCTS, YOU ARE ORDERED TO PAY THE
10 PRESCRIBED AMOUNT TO THE DEFENDANT. YOU ARE ORDERED TO
11 RETAIN FROM THE BALANCE THE AMOUNT OF THE PLAINTIFF'S CLAIM
12 AND DISBURSEMENTS, AS STATED IN THE ANNEXED COMPLAINT
13 PENDING THE FURTHER ORDER OF THE COURT. ANY EXCESS
14 INDEBTEDNESS SHALL NOT BE SUBJECT TO THE GARNISHMENT. IF YOU
15 HAVE PROPERTY BELONGING TO THE DEFENDANT AND THE AMOUNT OF
16 INDEBTEDNESS RETAINED IS LESS THAN THE AMOUNT CLAIMED AND
17 DISBURSEMENTS, YOU ARE TO RETAIN THE PROPERTY PENDING THE
18 FURTHER ORDER OF THE COURT, EXCEPT AS PROVIDED IN SECTION
19 812.18 (3) OF THE WISCONSIN STATUTES. ~~THE AMOUNT RETAINED BY YOU~~
20 ~~FOR THE PLAINTIFF'S DISBURSEMENTS MAY NOT EXCEED \$40.~~ ✓

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22 complaint on the undersigned attorney and to file your original answer with the clerk
23 of this court, within the 20-day period. In case of your failure to answer, judgment
24 will be entered against you for the amount of plaintiff's judgment against the
25 defendant and costs, of which the defendant will also take notice.

1 If the property which is the subject of this garnishment action is the proceeds
2 from the sale of crops, livestock, dairy products or another product grown or produced
3 by a person or by his or her minor children, you must pay over to the principal
4 defendant the appropriate amount under section 812.18 (2m) (b) of the Wisconsin
5 Statutes.

6 Dated this day of, (year)

7 Clerk of Court

8 (Seal)

9 Attorney for Plaintiff:

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11 P. O. Address

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13

14 **SECTION 2.** 812.05 (1) of the statutes is amended to read:

15 812.05 (1) The garnishee complaint in a garnishment action before judgment
16 must allege the existence of one of the grounds for garnishment mentioned in s.
17 812.02 (1) (a), the amount of the plaintiff's claim against the defendant and
18 disbursements, not to exceed \$40, above all offsets, known to the plaintiff, and that
19 plaintiff believes that the named garnishee is indebted to or has property in his or
20 her possession or under his or her control, other than earnings, as defined under s.
21 812.30 (7), belonging to the defendant (naming him or her) and that the indebtedness
22 or property is, to the best of plaintiff's knowledge and belief, not exempt from
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6 to the clerk. The clerk shall give a receipt for payment to the garnishee. The payment
7 shall discharge the garnishee of all liability for the amount paid.

8 **SECTION 4. Initial applicability.** ~~The treatment of sections 812.04 (2), 812.05~~

9 ~~(1), and 812.13 (1) of the statutes~~ first applies to a garnishment action commenced
10 on the effective date of this section.

11 **SECTION 5. Effective date.** This act takes effect on the first day of the 4th
12 month beginning after publication.

13 (END)

INS 3-23

Section #. 812.05 (2) of the statutes is amended to read:

812.05 (2) The garnishee complaint in a garnishment action after judgment must allege the existence of the grounds for garnishment mentioned in s. 812.02 (1) (b), and the name and location of the court, case number, if any, date of entry and amount of the judgment on which the garnishment action is based, the amount of the plaintiff's claim against the defendant and disbursements, ~~not to~~ [↓] ~~exceed \$40~~, [↓] above all offsets known to the plaintiff, and that plaintiff believes that the named garnishee is indebted to or has property in his or her possession or under his or her control belonging to the defendant (naming him or her) and that the indebtedness or property is, to the best of plaintiff's knowledge and belief, not exempt from execution.

History: Sup. Ct. Order, 67 Wis. 2d 585, 759, 778 (1975); Stats. 1975 s. 812.05; 1977 c. 80; 1983 a. 257; 1993 a. 80.

end of ins 3-23